

EQUIPMENT ASSISTANCE AGREEMENT

This Equipment Assistance Agreement ("Agreement") is entered into as of this _____ day of _____, 2018 ("Effective Date"), by and between the CITY OF SAN JOSE, a municipal corporation ("City"), and SAN JOSE STAGE COMPANY, a California nonprofit public benefit company ("Stage").

RECITALS

A. The Stage is a local nonprofit theater company that seeks to expand community, forge creative partnerships and challenge individuals through powerful, provocative and profound theater.

B. For more than thirty (30) years, the Stage has leased that certain real property located at 490 South First Street, as more particularly described in **Exhibit A** attached hereto ("Property"), on which the Stage has operated a local community theater.

C. The Stage now desires to acquire the Property, and, after acquisition of the Property, the Stage intends to redevelop the Property into a mixed use project ("Development") comprised of commercial condominium units, one of which will include a ground floor community theater space of at least six thousand seven hundred square feet ("Theater Condominium Unit").

D. In connection with the Development, the Stage intends to undertake a capital campaign to improve the community theater space within the Theater Space as defined below in Recital E and, following the successful outcome of the Stage's capital campaign, the City has agreed to assist the Stage in its acquisition of certain equipment to be used by Stage in the Theater Space subject to the terms and conditions set forth herein.

E. As a condition to the effectiveness of this Agreement and as consideration for the City's obligations hereunder, Stage has agreed to record a covenant at the close of escrow against the Property requiring that any future development of the Property, including the Development by Stage described above, contain a ground floor facility with direct access and visibility from South First Street for a community theater or other cultural facility of not less than six thousand seven hundred (6,700) square feet with an accessible loading dock ("Theater Space").

F. The City seeks to promote the arts in San Jose by fostering and assisting local arts organizations, such as the Stage.

G. Subject to the terms and conditions set forth in this Agreement, the City desires to reimburse Stage for its acquisition of certain equipment to be used in the Theater Space.

NOW, THEREFORE, the City, and Stage hereby agree as follows:

1. Conditions to Effectiveness of Agreement. This Agreement shall not be effective and neither party shall have any rights and/or obligations hereunder unless the following conditions have been satisfied:

A. Recordation of Covenant. At the close of escrow for the acquisition of the Property by the Stage, or other entity on behalf of the Stage, a covenant is recorded against the Property in the form attached hereto as **Exhibit B**, which requires that any future development of the Property, including the Development, contain, among other things, a ground floor facility for a community theater or other cultural facility ("Covenant"). The Covenant shall provide that, upon any future mixed use development of the Property, the Stage shall maintain ownership of a Theater Condominium Unit containing at least six thousand seven hundred (6700) square feet of Theater Space. The Covenant shall not be subordinate to any acquisition or other financing necessary to acquire the Property. Upon issuance of a permit for construction of a mixed use project, which includes the Theater Space, and recordation of a condominium map designating the Theater Condominium Unit, the restrictions contained in the Covenant shall apply only to the Theater Condominium Unit and not the Property as a whole.

B. Building Permit. On or before the second (2nd) anniversary of the Effective Date of this Agreement, in connection with the Development described above, Stage shall have applied for a building permit for tenant improvements from the City for improvements to the Theater Space ("Building Permit").

2. City Financial Assistance. Upon satisfaction of the conditions described above and subject to the terms and conditions set herein, the City agrees to disburse to Stage up to One Million Dollars (\$1,000,000) ("Equipment Assistance") for the acquisition of theater lighting, sound equipment, including related controllers, and furniture, including theater seating, for use by the Stage at the Theater Space (collectively, "Eligible Equipment").

3. Disbursement of Equipment Assistance. Prior to the acquisition of any Eligible Equipment, Stage shall submit a written request for disbursement to the City ("Request for Disbursement"), together with invoices evidencing the cost of the Eligible Equipment and such other information as reasonably requested by the City. Within ten (10) days after receipt of a Request for Disbursement, City shall review such Request for Disbursement to determine whether the equipment to be acquired thereunder complies with the requirements of this Agreement and shall disburse Equipment Assistance in an amount equal to eighty percent (80%) of the amount approved by the City. Upon submittal of evidence reasonably satisfactory to the City that Stage has paid for Eligible Equipment (which evidence may be receipts of payment in full), and that such Eligible Equipment has been installed at the Theater Space for use by Stage ("Evidence of Acquisition") (which evidence may be by the inspection required in Section 5 below), the Stage shall submit a Request for Disbursement for the remaining

twenty percent (20%) percent of the outstanding invoice amount ("Retention"). In no event shall the City be obligated to disburse to Stage for Eligible Equipment an amount in excess of One Million Dollars (\$1,000,000).

4. Designation for Seller's Permit. Prior to the purchase of any Eligible Equipment or any other machinery, tools, fixtures, or equipment for the Theater Space, Stage shall obtain a jobsite sub-permit of its seller's permit designating the Theater Space as the place of use. Designating the Theater Space as the place of use for all machinery, tools, fixtures or equipment furnished and installed as part of the project using the State of California Board of Equalization form BOE-530 (Schedule C – Detailed Allocation by Sub-outlet of Combined State and Uniform Local Sales and Use Tax).

5. Inspection and Approval. Prior to disbursement of any Retention, City and Stage representatives shall inspect the Theater Space to confirm that the Eligible Equipment has been installed and is being used at the Theater Space.

6. City Use. As additional consideration for the City's obligations hereunder, Stage shall provide to the City, at no cost, the right to reserve the Theater Space for up to twelve (12) dates each calendar year for public purposes ("City's Fixed Use"). For the purposes of this Agreement, "no cost" shall mean that the City shall not pay for the cost of the Stage's staff, equipment and other expenses associated with normal and customary services available to the general public using the Theater Space. The City shall pay the Stage reasonable incremental direct costs over and above that which is normally incurred by the Stage to provide the Theater Space for City's Fixed Use. All City Fixed Use reservation requests shall be submitted to the Stage through the City's Director of Cultural Affairs or his/her designee. The Stage shall make every reasonable effort to accommodate City's Fixed Use request on the dates requested and shall offer alternative dates if accommodation is not possible.

7. Failure to Improve the Property. The City has agreed to provide the Equipment Assistance hereunder to support redevelopment of the Property, including the development of the Theater Space. If Stage ceases operations or files for bankruptcy at the applicable times stated below in this Section 7 (collectively, "Reimbursement Event"), Stage shall, within thirty (30) days thereafter, reimburse the City for the Equipment Assistance that the City has provided, as follows:

A. If a Reimbursement Event occurs before the fifth (5th) anniversary of the date of issuance of Building Permit ("Building Permit Date"), Stage shall reimburse the City ninety percent (90%) of any Equipment Assistance disbursed to Stage under this Agreement;

B. If a Reimbursement Event occurs on or after the fifth (5th) anniversary of the Building Permit Date, but before the tenth anniversary of the Building Permit Date, Stage shall reimburse the City sixty seven percent (67%) of any Equipment Assistance disbursed to Stage under this Agreement;

C. If a Reimbursement Event occurs on or after the tenth (10th) anniversary of the Building Permit Date, but before the fifteenth anniversary of the Building Permit Date, Stage shall reimburse the City thirty-three percent (33%) of any Equipment Assistance disbursed to Stage under this Agreement;

D. If Stage remains in occupancy of the Theater Space on or beyond the fifteenth (15th) anniversary of the Certificate of Occupancy Date, Stage shall not be required to reimburse the City for any portion of the Equipment Assistance.

As security for its obligation hereunder, Stage shall grant a security interest in the Eligible Equipment for which Stage has received reimbursement through the Equipment Assistance to the City. Concurrently with delivery of the Evidence of Acquisition, Stage shall execute a security agreement in substantially the form attached hereto as **Exhibit C** and shall authorize the City to file a UCC-1 to perfect the City's security interest in the Eligible Equipment. If the Stage ceases operations or declares bankruptcy, Stage hereby grants the City the right to enter the Theater Space, or other premises where the Eligible Equipment may have been relocated, to take possession of the Eligible Equipment. If the City takes possession of the Eligible Equipment, the City shall have the right to take any and all actions with respect to such equipment, including the sale of such equipment, and any actions taken by the City with respect to such equipment shall be in addition to any other remedies available to the City at law or equity. The City's security interest in the Eligible Equipment shall be senior to any other lender or financing.

8. **Amendments.** This Agreement may be amended, changed or modified only by an instrument in writing signed by the City and Stage.

9. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. Any oral representations or modifications concerning the subject matter of this Agreement shall be of no force and effect.

10. **Waiver.** Any waiver by the City or Stage of any term, condition or requirement of this Agreement shall not constitute a waiver of any other term, condition or requirement hereof or constitute a waiver of the same term, condition or requirement in any other instance.

11. **Notices.** Any notice or demand which shall be required or permitted by law or any provisions of this Agreement shall be in writing, and shall be deemed effective when personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

To: City of San Jose
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113
Attention: Director of Cultural Affairs

To: San Jose Stage Company
490 South First Street
San Jose, CA 95113
Attn: Executive Director

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to any claims against the City, its officers or employees, shall also be served in the manner specified above to the following address:

City of San Jose
Richard Doyle, City Attorney
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113

Notice shall be deemed given on the date of personal delivery by hand, or the date of receipt of facsimile transmission (with verification receipt), or on the date delivery is refused, if applicable.

12. Time. Time is of the essence in this Agreement.

13. Hold Harmless. Stage shall indemnify, defend and hold the City, its officers and employees harmless from all suits, actions, claims, causes of action, costs, demands, judgments or liens arising out of this Agreement as a result of any acts or omissions of Stage or its contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent of the sole negligence, willful misconduct, or breach of this Agreement by the City or any of such other indemnified parties.

14. Successors and Assigns. Subject to the provisions of Section 15, Stage binds itself, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in this Agreement.

15. Assignment. Stage shall not assign this Agreement without the express written consent of the City, which consent shall be within the sole and absolute discretion of the City Manager.

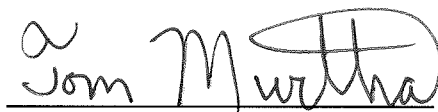
16. Severability of Provisions. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

17. Distinction from Regulatory Authority of the City. Stage understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of any project as contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

"City"

APPROVED AS TO FORM:



Tom Murtha
Senior Deputy City Attorney

CITY OF SAN JOSE, a municipal corporation

By: _____
Title: _____

"Stage"

San Jose Stage Company, a California nonprofit corporation


By: 
Title: EXECUTIVE DIRECTOR

EXHIBIT A
DESCRIPTION OF PROPERTY

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PORTION OF LOT 7 IN BLOCK 4, RANGE 2 SOUTH, AS SHOWN ON THAT CERTAIN MAP ENTITLED "CITY OF SAN JOSE; COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK A OF MAPS, PAGE(S) 72 AND 73 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EASTERLY LINE OF FIRST STREET AT A POINT WHERE THE SAID LINE OF FIRST STREET IS INTERSECTED BY THE DIVIDING LINE BETWEEN LOTS 6 AND 7, IN BLOCK 4, RANGE 2 SOUTH OF THE BASE LINE AND RUNNING THENCE SOUTHERLY ALONG SAID LINE OF FIRST STREET, 39 FEET AND 7 INCHES; THENCE EASTERLY AT A RIGHT ANGLE TO SAID LINE OF FIRST STREET 95 FEET; THENCE AT A RIGHT ANGLE NORTHERLY AND PARALLEL WITH SAID LINE OF FIRST STREET, 39 FEET AND 7 INCHES TO THE SAID DIVIDING LINE; THENCE WESTERLY AND ALONG SAID DIVIDING LINE 95 FEET TO SAID LINE OF FIRST STREET, AND THE PLACE OF BEGINNING.

PARCEL TWO:

PORTION OF LOT 6 IN BLOCK 4, RANGE 2 SOUTH, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK A OF MAPS, PAGES 72 AND 73 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A STAKE SET IN THE EASTERLY LINE OF FIRST STREET WHERE THE SAME IS INTERSECTED BY THE SOUTHERLY LINE OF LOT 6, IN BLOCK 4, RANGE 2 SOUTH, OF THE BASE LINE OF THE CITY OF SAN JOSE; THENCE IN AN EASTERLY DIRECTION ALONG THE SOUTHERLY LINE AT SAID LOT 6, 137.84 FEET; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT 6, 2 FEET; THENCE WESTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 6, 131.84 FEET TO THE EASTERLY LINE OF FIRST STREET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF FIRST STREET 2 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

PORTION OF LOT 7 IN BLOCK 4, RANGE 2 SOUTH, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK A OF MAPS, PAGES 72 AND 73, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EASTERLY SIDE OF FIRST STREET, DISTANT THEREON 39 FEET AND 7 INCHES SOUTHERLY FROM THE NORTHWEST CORNER OF SAID LOT 7; AND RUNNING THENCE SOUTHERLY ALONG THE EASTERLY LINE OF FIRST STREET 40 FEET; THENCE EASTERLY AT EIGHT ANGLES WITH FIRST STREET 95 FEET; THENCE NORTHERLY AND PARALLEL WITH THE SAID LINE OF FIRST STREET 40 FEET; AND THENCE WESTERLY ALONG THE SOUTHERLY LINE OF THOMAS LOT 95 TO THE PLACE OF COMMENCEMENT.

PARCEL FOUR:

PORTION OF LOT 7 IN BLOCK 4, RANGE 2 SOUTH, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF

SANTA CLARA, STATE OF CALIFORNIA IN BOOK A OF MAPS, PAGES 72 AND 73 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF WILLIAM STREET WITH THE EASTERLY LINE OF FIRST STREET AND RUNNING THENCE EASTERLY ALONG THE NORTHERLY LINE OF WILLIAM STREET, 137.84 FEET; THENCE AT RIGHT ANGLES NORTHERLY 137.84 FEET; THENCE AT RIGHT ANGLES WESTERLY AND PARALLEL WITH WILLIAM STREET 42.84 FEET; THENCE AT RIGHT ANGLES SOUTHERLY AND PARALLEL WITH FIRST STREET 79 FEET 7 INCHES; THENCE AT RIGHT ANGLES WESTERLY AND PARALLEL WITH WILLIAM STREET 95 FEET TO THE EASTERLY LINE OF FIRST STREET; AND THENCE SOUTHERLY ALONG THE EASTERLY LINE OF FIRST STREET 58 FEET AND 9 INCHES, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 467-47-098

EXHIBIT B

RECORDING REQUESTED BY:
AND WHEN RECORDED SEND TO:

City of San Jose
Office of The City Attorney
200 East Santa Clara Street
16th Fl Tower
San Jose, California 95113
Attn.: City Attorney's Office

THIS DOCUMENT IS RECORDED FOR THE BENEFIT OF THE CITY OF SAN JOSE AND IS EXEMPT FROM
FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103

RESTRICTIVE COVENANT

This Restrictive Covenant ("Covenant") is made and entered into this _____ day of _____, 2018, by the SAN JOSE STAGE COMPANY, a California nonprofit public benefit company ("Stage") for the benefit of the CITY OF SAN JOSE ("City").

RECITALS

A. The Stage is the owner of that certain real property located at 490 South First Street, as more particularly described in Exhibit A attached hereto and incorporated herein by reference ("Property"); and

B. As a condition precedent to the effectiveness of an Equipment Assistance Agreement dated August ____, 2018 between the Stage and the City ("Agreement"), wherein the City has agreed to provide assistance to the Stage of up to One Million Dollars (\$1,000,000) subject to the terms and conditions set forth therein, the Stage is required to record against the Property a covenant running with the land in perpetuity requiring that the Property, in its currently existing condition, be continuously used and operated as a community theater or other cultural facility and that any future development of the Property contain a ground floor facility with direct access and visibility from South First Street for a community theater or other cultural facility of not less than six thousand seven hundred (6,700) square feet with an accessible loading dock, which shall be used and operated as a community theater or other cultural facility; and

C. Stage hereby intends to satisfy the above-described condition of the Agreement through recordation of this Covenant.

NOW, THEREFORE, for good and valuable consideration, receipt of which is acknowledged, Stage hereby declares and covenants as follows:

1. Current Use. Stage hereby covenants, on behalf of itself and its successors and assigns, that from and after the date of recordation of this Covenant, that the Property, in its currently existing condition, shall continuously be used and operated as a community theater or other cultural facility acceptable to the City.

2. Covenant Regarding Future Use. Stage hereby covenants, on behalf of itself and its successors and assigns, that from and after the date of recordation of this Covenant, that any future development of the Property shall contain a ground floor facility with direct access and visibility from South First Street for a community theater or other cultural facility of not less than six thousand seven hundred (6,700) square feet with an accessible loading dock, which shall be used as a community theater or other cultural facility acceptable to the City ("Theater Space"). Upon the development of a mixed use project, the Stage shall maintain ownership of the Theater Space in the form of a separate condominium unit ("Theater Condominium Unit"). Upon issuance of a permit for construction of a mixed use project, which contains the Theater Space, and recordation of a condominium map designating the Theater Condominium Unit, the restrictions contained herein shall apply only to the Theater Condominium Unit and not the Property as a whole and, as soon as reasonably practicable thereafter, the City and Stage shall record an amendment to this Covenant substituting the legal description of the Theater Condominium Unit as Exhibit A hereto and as Exhibit A to the Security Agreement attached hereto as Exhibit C.

3. Term. The term of this Covenant shall commence upon recordation hereof and shall run with the land in perpetuity unless extinguished or abandoned by the City in accordance with applicable law.

4. Change In Use. This Covenant and the uses described in Paragraphs 1 and 2 above shall not be changed without the prior written consent of the City, which consent shall be within the sole and absolute discretion of the City Manager.

5. Successors and Assigns. This Covenant is intended to be for the mutual benefit of the parties and their successors in interest. The Stage hereby declares that the provisions of this Covenant are intended to run with the land, and shall be binding upon all persons who now or hereafter own any right, title or interest in the Property (or, if applicable, pursuant to the terms of Section 2 above, the Theater Condominium Unit) or any part thereof and shall be for the joint and several benefit of all such persons.

6. Severability. The invalidity of any one of the covenants, conditions, restrictions or other provisions herein contained shall in no way affect any of the other covenants, conditions, restrictions or other provisions hereof, and the same shall remain in full force and effect.

7. Default. If, within thirty (30) days after written notice from the City, the Stage fails to cure any default of this Covenant, the City shall have the right to pursue

any remedies available to it at law and/or equity, including, but not limited to, specific performance or injunctive relief.

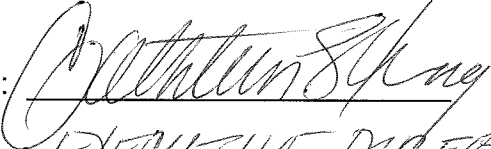
IN WITNESS WHEREOF, this Covenant has been executed as of the day and year first above written.

“Stage”

SAN JOSE STAGE COMPANY,
a California nonprofit public benefit company

By:

Its:


EXECUTIVE DIRECTOR

By: _____

Its: _____

Exhibit A

Legal Description

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PORTION OF LOT 7 IN BLOCK 4, RANGE 2 SOUTH, AS SHOWN ON THAT CERTAIN MAP ENTITLED "CITY OF SAN JOSE; COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK A OF MAPS, PAGE(S) 72 AND 73 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EASTERLY LINE OF FIRST STREET AT A POINT WHERE THE SAID LINE OF FIRST STREET IS INTERSECTED BY THE DIVIDING LINE BETWEEN LOTS 6 AND 7, IN BLOCK 4, RANGE 2 SOUTH OF THE BASE LINE AND RUNNING THENCE SOUTHERLY ALONG SAID LINE OF FIRST STREET, 39 FEET AND 7 INCHES; THENCE EASTERLY AT A RIGHT ANGLE TO SAID LINE OF FIRST STREET 95 FEET; THENCE AT A RIGHT ANGLE NORTHERLY AND PARALLEL WITH SAID LINE OF FIRST STREET, 39 FEET AND 7 INCHES TO THE SAID DIVIDING LINE; THENCE WESTERLY AND ALONG SAID DIVIDING LINE 95 FEET TO SAID LINE OF FIRST STREET, AND THE PLACE OF BEGINNING.

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APN: 467-47-098

EXHIBIT C

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Agreement") is entered into as of this ____ day of _____, 2018 by the SAN JOSE STAGE COMPANY, a California nonprofit public benefit company ("Stage"), whose principal place of business is located at 490 South First Street, San Jose, California 95113 in favor of the CITY OF SAN JOSE, a charter city ("City").

RECITALS

A. City and Stage entered into that certain Equipment Assistance Agreement dated _____, 2018, ("Equipment Agreement"), whereby the City agreed to reimburse Stage for the acquisition of certain equipment in connection with the development of the real property located at 490 South First Street, San Jose, California and as more particularly described on **EXHIBIT A** attached hereto ("Property").

B. Pursuant to the terms of the Equipment Agreement, Stage agreed to reimburse the City for a portion of the equipment assistance paid to Stage if Stage ceased to exist or filed bankruptcy within certain time periods set forth in the Equipment Agreement ("Reimbursement Obligation").

C. As security for Stage's Reimbursement Obligation, the Equipment Agreement provides that Stage shall grant to the City a security interest in certain capital equipment acquired by Stage for the Property.

NOW, THEREFORE, in consideration of the City's agreement to enter into the Equipment Agreement, Stage agrees as follows:

1. **SECURITY INTEREST**. Stage hereby grants and assigns to City a security interest in all of the following described personal property in which Stage now or at any time hereafter has any interest (collectively, the "Collateral"):

Any of the equipment listed on **Attachment B** attached hereto, which are or are to be incorporated into, used in connection with, or appropriated for use on the real property described on **Attachment A** to this Equipment Agreement.

2. **OBLIGATIONS SECURED**. This Agreement secures the payment and performance of all present and future obligations of Stage to City under the Equipment Agreement and under any other agreement which recites that it is secured hereby.

3. **REPRESENTATIONS AND WARRANTIES**. Stage represents and warrants that:
(a) Stage has, or will have, good title to the Collateral; (b) Stage has not previously

assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Stage's principal place of business is, or will be upon completion of certain improvements to such building, located at 490 South First Street, San Jose, California, as specified above.

4. **RIGHTS OF LENDER.** In addition to City's rights as a "Secured Party" under the California Uniform Commercial Code ("UCC"), as amended or recodified from time to time, if Stage is obligated to pay the Reimbursement Obligation and fails to do so within the time period set forth in the Equipment Agreement, the City may, but shall not be obligated to, without notice and at the expense of Stage: (a) give notice to any person of City's rights hereunder and enforce such rights; (b) insure, protect, defend and preserve the Collateral or any rights or interests of City therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Stage under or from the Collateral. City shall have no duty or obligation to make or give any presentments, demands for performance, notices of nonperformance, notices of protest or notices of dishonor in connection with any of the Collateral.
5. **COLLATERAL DESIGNATION STATEMENT.** Stage shall, from time to time within five (5) business days of City's request, deliver to City a written statement showing the description and location of all Collateral then subject to this Agreement.
6. **MISCELLANEOUS UNDERTAKINGS.** Stage, at its sole cost and expense, agrees to pay within thirty (30) days of City's demand, all expenses, including, without limitation, attorneys' fees and court costs, incurred by City in connection with the enforcement of any of the security interests granted under this Agreement.
7. **DEFAULT.** "Default" shall mean the failure by Stage to pay the Reimbursement Obligation to the City within the time period set forth in the Equipment Agreement or the failure to be true of any representation or warranty of Stage herein.
8. **LENDER'S RIGHTS ON DEFAULT.** Upon default and at any time thereafter, City may declare all obligations secured hereby immediately due and payable and shall have the remedies under the uniform commercial code of California, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Stage can give authority therefore, with or without judicial process, enter (if this can be done without breach of the peace), upon any premises on which the Collateral or any part thereof may be situated and remove the same there from (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Uniform Commercial Code of California); and the City shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Stage's right of redemption in satisfaction of the Stage's Obligations as provided in the

Uniform Commercial Code of California. City without removal may render the Collateral unusable and dispose of the Collateral on Stage's premises. City may require Stage to assemble the Collateral and make it available to City for possession at a place to be designated by City which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, City will give Stage at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Stage shown at the beginning of this agreement at least ten (10) days before the time of the sale or disposition. City may buy at any public sale.

The remedies of the City hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code of California shall not be construed as a waiver of any of the other remedies of the City so long as any part of the Reimbursement Obligation remains unsatisfied.

Notwithstanding any other provision of this Agreement, City shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Stage to City unless City shall make an express written election of said remedy.

9. **POWER OF ATTORNEY.** Stage hereby irrevocably appoints City as Stage's attorney-in-fact (such agency being coupled with an interest), for the sole purpose of , without the obligation to do so, in City's name or in the name of Stage, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of City's security interests and rights in or to any of the Collateral, and, upon Default hereunder take any other action specified in Section 8 hereof; provided that City as such attorney-in-fact shall be accountable only for such funds as are actually received by City.
10. **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Agreement, so long as no Default exists under this Agreement, Stage may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Stage's business. Stage will not, without the prior written consent of City, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of the Collateral, other than in the ordinary course of Stage's business.
11. **INTEGRATION.** This Agreement and the Equipment Agreement contain the entire agreement of the parties and supersede any and all prior negotiations. No subsequent agreement, representation, or promise made by either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.